

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DANIEL R. LEWIS,

Plaintiff,

vs.

**BANCWISE REAL ESTATE
SERVICES LLC,**

Defendant.

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8:06CV445

ORDER

This matter is before the court on the defendant's Motion for Summary Judgment (Filing No. 31).¹ The defendant filed a brief (Filing No. 32) and an index of evidence (Filing No. 33) in support of the motion. The plaintiff filed a brief (Filing No. 47) and an index of evidence (Filing Nos. 48-58) in opposition to the motion. The defendant filed a brief (Filing No. 61) and an index of evidence (Filing No. 62) in reply. Upon consideration of the pleadings, evidence, and briefs of the parties, the court concludes the motion should be denied.

The plaintiff, who was forty-eight years old when he was terminated from his employment as a Vice President/Loan officer, claims he was discriminated against on the basis of age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623, and Nebraska law. Specifically, the plaintiff alleges he was replaced by substantially younger individuals and the defendant continued to employ less productive, but younger, individuals. The defendant claims the plaintiff was terminated because his job performance was unsatisfactory. On the evidence presented, the court finds that genuine issues of material fact preclude the entry of summary judgment on all issues raised by the defendant. Accordingly,

IT IS ORDERED:

The defendant's Motion for Summary Judgment (Filing No. 31) is denied.

DATED this 5th day of July, 2007.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge

¹The undersigned magistrate judge exercises jurisdiction over this matter after consent by the parties and transfer by United States Chief District Court Judge Joseph F. Bataillon. **See** Filing No. 30.